OCT 4 1945
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

NO. 483

WEIRTON STEEL COMPANY, Petitioner,

v.

COSTANZO COAL MINING COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

C. M. THORP, JR.,
JOHN E. LAUGHLIN, JR.,
THORP, BOSTWICK, REED & ARMSTRONG,
2812 Grant Building,
Pittsburgh, Pa.
CARL G. BACHMANN,
1513 Chapline Street,
Wheeling, W. Va.,
Attorneys for Petitioner.

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BOULEVARD OF ALLIES, PITTSBURGH, PA.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner respectfully prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Fourth Circuit, entered on July 26, 1945, reversing and remanding a judgment of the District Court of the United States for the Northern District of West Virginia entered on January 3, 1945.

Summary Statement of the Matter Involved.

(a) THE PROCEEDINGS BELOW.

The Opinion of the District Court of the United States for the Northern District of West Virginia was entered on January 3, 1945 and is reported in 58 F. Supp. 493. The Opinion of the Circuit Court of Appeals was entered on July 26, 1945 and is not yet officially reported.

(b) THE FACTS OF THE CASE.*

This case arises under the Bituminous Coal Act of 1937 (50 Stat. 72; 15 U.S.C.A., Sec. 828 *et seq.*), the constitutional validity of which was sustained by this Court in *Sunshine Anthracite Coal Company v. Adkins,* 310 U. S. 381, 60 S. Ct. 907 (1940). Such Act created the Bituminous Coal Code, which was in substance a statutory agreement among participating coal producers to adhere to certain standards of fair competition, including minimum prices to be fixed by the administrator of the Code.

The respondent (the plaintiff below), which was a sales agent for producers of bituminous coal and a registered distributor under the Code, brought an action against the petitioner in the District Court of the United States for the Northern District of West Virginia, to recover the difference between the contract price paid by the petitioner for coal purchased from the respondent's principals and the minimum price established by the Bituminous Coal Division of the Department of the In-

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* Record references relate to the record before the Circuit Court of Appeals, consisting of several appendices to the brief of the appellant (the respondent in this Court). Page references are to the pages of the Record in this Court.

terior under the authority of the Code. The claim was based on deliveries of coal occurring between October 1, 1940, the effective date of the minimum prices, and March 23, 1941, the date on which the petitioner terminated its contract with the respondent, and the amount involved was $176,116.24 (See Opinion of the Circuit Court of Appeals, R. 58 *et seq*). The case was heard by the District Court, without the intervention of a jury, upon the pleadings and an Agreed Statement of the Facts. The District Court, on January 3, 1945, made and entered certain Findings of Fact and Conclusions of Law (Appendix B to appellant's brief, R. 13 *et seq.*) together with its Opinion directing that judgment be entered for the defendant, i.e., the petitioner. The respondent appealed to the United States Circuit Court of Appeals for the Fourth Circuit which, on July 26, 1945, entered its Opinion directing that the judgment below be reversed and the case remanded.

The essential facts of the controversy, as set forth in the Agreed Statement of Facts (Appendix F to appellant's brief, R. 21 *et seq.*) and the Findings of the District Court, are as follows:

The respondent was a general sales agent for two producers of bituminous coal, the Cove Hill Coal Company and Wheeling Valley Coal Corporation. It operated under written agency agreements with both producers which were almost identical and which provided, in substance, that the respondent would act as exclusive sales agent for the coal companies, could make contracts binding upon them, would receive commissions on all sales negotiated for them and would guarantee the collectibility of all accounts (Agreed Statement, Appendix F to appellant's brief, R. 33 to 36).

Pursuant to these agency agreements, the respondent, on March 20, 1933, entered into a written agreement with the petitioner, a manufacturer of iron and steel products, to supply 90% of the petitioner's requirements of steam coal for a period of one year from April 1, 1933. This contract (Agreed Statement, Appendix F to appellant's brief, R. 24) contained a renewal clause reading as follows:

> "That deliveries of said coal is to be confined between dates of April 1, 1933 and April 1, 1934 with renewal privilege for period of two years, each upon written notice by purchaser 30 days prior to April 1, 1934."

Both the petitioner and the respondent interpreted this somewhat ambiguous renewal clause as permitting *a series* of renewals for two-year periods and, on the basis of such understanding, the petitioner exercised its renewal privilege in 1934, 1936, 1938 and 1940, with the result that, whether or not the parties correctly interpreted the contract, they were *in fact* acting under it during the period involved in the suit. As a matter of fact, the Agreed Statement of Facts contains the express stipulation (Appendix F to appellant's brief, R. 32) that the petitioner and the respondent *"did not make or have any contract or agreement with respect to the deliveries of coal"* involved in the action below *"except the instrument and (renewal) letters"* attached to the Agreed Statement of Facts.

The Bituminous Coal Act did not impose the Bituminous Coal Code upon all producers of bituminous coal but created a procedure for voluntary participation and provided an incentive to membership in the form of relief from a penalty tax of 19½% on coal sales and a limited exemption from the Anti-Trust Laws.

The Bituminous Coal Code contained many detailed provisions which need not be delineated. The relevant portions can be briefly summarized as follows:

1. It authorized the Bituminous Coal Division of the Department of the Interior, as the Code Administrator, (a) to establish minimum prices to be observed by members of the Code, (b) to fix maximum prices for such members if necessary to protect consumers, and (c) to promulgate marketing rules for Code members and their agents and distributors; and

2. It established certain general standards of fair competition to be observed by producers who entered the Code.

The Act also provided, however, that coal contracts made before June 16, 1933, would be exempt from price control.

The two producers whom the respondent represented accepted membership in the Code and the respondent itself registered as a distributor of coal under the marketing rules promulgated by the Code Administrator. Eventually, the Bituminous Coal Division, on August 8, 1940, established minimum prices for bituminous coal sold or offered for sale by *"persons subject to the Code"*, which prices became effective October 1, 1940. During the period October 1, 1940 to March 21, 1941 the respondent, as sales agent for its two producer-principals, caused to be sold and delivered to the petitioner more than 150,000 tons of coal at the prices agreed upon between the parties under the original contract and renewal agreements described above (Agreed Statement, R. 24). The coal so delivered was invoiced to the petitioner at such prices and the invoices were paid by the

petitioner to the respondent which remitted the amounts, after deducting its commissions, to its principals (See paragraph 6, Findings of Fact, R. 14).

It is conceded that the prices actually paid under the original contract as renewed were lower than the minimum prices promulgated by the Code Administrator, the difference, over the entire period, amounting to the sum in suit. The respondent, however, assured the petitioner that it was entitled to deliver the coal at prices below the Code minima because the original contract was exempt from the application of the Code, as an agreement in existence before June 16, 1933 (See Agreed Statement, R. 52-53).

In March, 1941, the Administrator of the Code charged the respondent with alleged violations of Marketing Rules applicable to registered distributors and ordered it to cease deliveries to the petitioner at prices below the Code prices. As a result, on March 21, 1941, the respondent orally advised the petitioner that deliveries after that dated would be made at Code prices to which the petitioner replied that deliveries should be made at the contract prices or not at all (Findings of Fact, R. 14). This notification and reply were then confirmed by an exchange of letters and deliveries ceased on March 23, 1941 (Agreed Statement, R. 47-48).

Within a few months, the Bituminous Coal Division instituted proceedings against the respondent to revoke its registration as a distributor because of these and other transactions. The petitioner was not a party to the proceedings; therefore the ultimate ruling of the Code Administrator appears to be immaterial. However, it should be said for the information of the Court that

the respondent was found guilty of transgressions of the Code.

The respondent then instituted the action in the Court below to recover the difference between the contract prices and the Code prices. The District Court directed the entry of a judgment for the petitioner, on three grounds:

1. The petitioner, as a purchaser of coal, was not subject to the Act or the Code, and the respondent, if it had violated the Code, could not take advantage of its own wrong and recover from the innocent purchaser in derogation of a contract which the latter believed to be lawful.

2. The cause of action, if it existed, was the property of the sellers of the coal and could not be enforced by their sales agent.

3. The District Court had no jurisdiction of the action since it was in effect a suit on an implied contract between citizens of the same State.

This Petition presents the first question decided by the District Court and it is the petitioner's contention that the decision of the District Court on this point was in conformity with several applicable decisions of this Honorable Court and with the plain intent of the Bituminous Coal Act.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U.S.C. 347(a).

Questions Presented.

1. Whether or not a plaintiff who has violated a statute of the United States may repudiate a fully executed contract against an innocent party who was not subject to the statute and recover a sum in excess of the contract price on the ground that the plaintiff violated the statute in performing the contract?

2. Whether or not the Bituminous Coal Act of 1937 or the Bituminous Coal Code, established pursuant to such Act, creates a cause of action on the part of a distributor of bituminous coal, who was registered under the Code, to recover from the purchaser of such coal the difference between the agreed prices at which such coal was delivered and paid for and the minimum prices fixed by the Code, where the purchaser, who was not a party to the Code or subject to its terms, believed and was informed by the distributor that the agreed prices were lawful prices?

Reasons Relied on for the Allowance of the Writ.

1. The decision of the Circuit Court has decided a Federal question in a way which is in conflict with applicable decisions of this Court, which hold that the Courts of the United States will not permit a wrongdoer to recover from an innocent party to an executed contract on the ground that the performance of such contract by the wrongdoer was contrary to a statutory obligation of the wrongdoer.

2. The decision of the Circuit Court has decided an important question of Federal law which has not been

but should be decided by this Court, in that it has ruled that the Bituminous Coal Act of 1937 and the Bituminous Coal Code create an implied contract on the part of a person not subject to the Act or Code to pay Code prices, regardless of an agreement, made in good faith, providing for other prices.

Respectfully submitted,

WEIRTON STEEL COMPANY, *Petitioner,*

By—C. M. THORP, JR.,
By—CARL G. BACHMANN,
Attorneys for Petitioner.

C. M. THORP, JR.,
JOHN E. LAUGHLIN, JR.,
THORP, BOSTWICK, REED & ARMSTRONG,
2812 Grant Building,
Pittsburgh, Pa.
CARL G. BACHMANN,
1513 Chapline Street,
Wheeling, W. Va.